



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF V-BIS-, INC.

DATE: OCT. 4, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a business intelligence consulting firm, seeks to temporarily employ the Beneficiary as a “senior BI consultant” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation position.<sup>1</sup>

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the evidence of record satisfies all evidentiary requirements.

Upon *de novo* review, we will dismiss the appeal.

#### I. LEGAL FRAMEWORK

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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<sup>1</sup> While she did not enter a finding on the matter, the Director questioned whether the labor condition application (LCA) corresponds to and supports the H-1B petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

## II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “senior BI consultant.” In a letter submitted with the H-1B petition, the Petitioner provided the following description of the duties of the proffered position:

- Liaise with business analysts to gather requirements and enhancements to develop BI solutions
- Analyze data to identify business problems and provide solutions
- Ensure that the design and operation of the BI solutions are appropriate to meet the information and decision support requirements of the business
- Liaise with external IT support providers to ensure effective delivery of relevant services for BI solutions
- Develop the appropriate solution, Reports or Cubes using the SAO BI Tools as per the technical specifications
- Support and maintain existing database and BI systems
- Implement changes to existing BI systems

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- Ensure compliance with the defined standards and best practices and ensure optimal performance when released to the production environment
- Maintain full documentation for BI solutions and related services together with associated communications documents
- Ad hoc data analysis for internal users.<sup>2</sup>

The Petitioner stated, “The nature of the job duties requires the skills and education of an individual with at least a Bachelor Degree in Computer Science, Information Systems, Engineering, Mathematics or a closely related field.”

In a letter submitted in response to a request for evidence (RFE) in this matter, the Petitioner provided the following additional description of the duties of the proffered position (note: errors in the original text have not been changed):

In his proposed role, [the Beneficiary] will be responsible for performing the following

- With our Innovation Lab and Data Center Systems
  - Integrate [the Petitioner’s] own products with our business intelligence infrastructure
  - Support activities such as training, proof of concepts, product research & development, customer development, customer demonstrations and support
  - Liaise with executives and sales teams to periodically capture needs from the prospective customers and collaborate with product management team
- For customers - ASP BI, SAP BOBJ, and SAP HANA – Implementations and Support for our clients pursuant to the Purchase Support Agreements include
  - Provide Consulting and Implementation expertise for SAP BW and SAP Business Objects Rollout for its Executive Dashboards Program using our Products [redacted] or [redacted]
  - Support [the Petitioner’s] Product Extensions [redacted] Add-Ons installed in the client’s SAP business objects environments

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<sup>2</sup> These duty descriptions appear to have been copied, with only minor modifications, from a duty description contained in an online vacancy announcement at [redacted] (last visited Sep. 29, 2016) That announcement is for a vacancy in [redacted] South Africa. As the first duty description the Petitioner provided appears to be another position’s duty description, rather than an in-depth description of the duties of the proffered position as they would be performed in the context of the Petitioner’s operations, we will focus upon the second duty description, which was provided in response to the RFE.

- Provide support and advisory on usability during US Central Time Zone to the client's IT and Business users team on supporting (the Petitioner's) extensions and also executive dashboards that are implemented by [the Petitioner].
- Liaise with users to gather requirements
- Provide usability expertise of [the Petitioner's] products in customer data-warehouse environments
- Develop and test pre-authored reports, dashboards and visualizations for customers
- Implement performance tuning techniques to ensure best user experience
- Provide support and maintenance for our products, which contractually requires support during US daytime
- For [the Petitioner's] employees – Train [the Petitioner's other] employees on [the Petitioner's] Products on usability, performance and best practices
- For Prospective Customers – Build Pre-Sales Demo and Explain our Product Features and Functionalities

The Petitioner also provided the following table pertinent to the duties of the position:

Activity	Related Party	% Time
Customer Support by answering their questions on Usability, Performance and Techniques	[The Petitioner's] Customers	50%
Provide Training and Mentoring to [the Petitioner's other] Employees	[The Petitioner]	10%
Build Pre-Sales Demo and Explain our Product Features and Functionalities	Prospective Customers	30%
As a Senior Consultant Mentor other employees in our Pre Packaged Demos/Solutions project to showcase the value of our Product using our Innovation Labs like by loading Census Data, Economic Indicators, Oil and Gas Production Data, Publically Available Large Datasets.	[The Petitioner's] (Internal R&D Project)	10%

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>3</sup> Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>4</sup>

#### A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>5</sup>

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Systems Analysts" corresponding to the Standard Occupational Classification code 15-1121.<sup>6</sup> The *Handbook* states the following with regard to the educational requirements of computer system analyst positions:

Most computer systems analysts have a bachelor's degree in a computer-related field. Because these analysts also are heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems.

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<sup>3</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>4</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>5</sup> All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

<sup>6</sup> The Petitioner classified the proffered position at a Level II wage (the second-lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level II wage rate is generally appropriate for positions in which the Petitioner expects the Beneficiary to perform moderately complex tasks that require limited judgment. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf). A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.*

Some employers prefer applicants who have a master's degree in business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Sept. 29, 2016).

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions. This section of the narrative begins by stating that a bachelor's degree in a related field is not a requirement. The *Handbook* continues by stating that there is a wide-range of degrees that are acceptable for positions in this occupation, including general purpose degrees such as business and liberal arts. While the *Handbook* indicates that a bachelor's degree in a computer or information science field is common, it does not report that such a degree is normally a minimum requirement for entry into the position.

According to the *Handbook*, many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere. It further reports that many analysts have technical degrees. We observe that the *Handbook* does not specify a degree level (e.g., associate's degree, baccalaureate) for these technical degrees. Moreover, it specifically states that such a degree is not always a requirement. Thus, the *Handbook* does not support the claim that the occupational category of computer systems analyst is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here would normally have such a minimum, specialty degree requirement or its equivalent.

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such cases, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

However, in this case, the record of proceedings does not contain sufficient persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion within the Computer Systems Analysts occupational category establishes the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

While the Petitioner's citation to DOL's Occupational Information Network (O\*NET) is acknowledged, it does not establish that the proffered position qualifies as a specialty occupation under the first criterion, either. In general, O\*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a standard entry requirement for a given position, as O\*NET's Job Zone designations make no mention of the specific field of study from which a degree must come. Again, we interpret the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. Furthermore, the Specialized Vocational Preparation (SVP) ratings, which are cited within O\*Net's Job Zone designations, are meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP ratings do not describe how those years are to be divided among training, formal education, and experience and do not specify the particular type of degree, if any, that a position would require.

Further, we find that, to the extent that they are described in the record of proceedings, the numerous duties that the Petitioner ascribes to the proffered position indicate a need for a range of technical knowledge in the computer/IT field, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

For the reasons explained above, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

## B. Second Criterion

The second criterion presents two, alternative prongs: "The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

### 1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the "degree requirement" (i.e., a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

Nor do the job vacancy announcements submitted by the Petitioner satisfy this prong, as it is not clear that any of the advertised position could be considered "parallel" to the one proffered here. For example, all seven of the advertised positions require work experience – one as much as "seven to ten" years. However, given the Petitioner's assertion made via the LCA that the Beneficiary would perform only moderately complex tasks requiring limited exercise of judgment, it appears that these positions are much more "senior" than the one proposed for the Beneficiary. Furthermore, while the job vacancy announcements all state a requirement for at least a bachelor's degree, few of them require that the degree be in a specific specialty.

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions with organizations that are in the Petitioner's industry and otherwise similar to the Petitioner. The Petitioner has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

## 2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

A review of the record of proceedings finds that the Petitioner has not credibly demonstrated that the duties the Beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Even when considering the Petitioner's general descriptions of the proffered position's duties, the evidence of record does not establish why a few related courses or industry experience alone is insufficient preparation for the proffered position. While a few

related courses may be beneficial, or even required, in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

There is also the matter of the LCA. As noted, the Petitioner attested on the submitted LCA that the wage level for the proffered position is a Level II wage. Such a wage level is for a position in which the Beneficiary would perform moderately complex tasks requiring limited judgment.<sup>7</sup>

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the Petitioner did not demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the Petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

The Petitioner stated that the Beneficiary's job title would be "Senior BI Consultant" and that the position corresponds to a wage Level II computer systems analyst position. However, the record contains an organizational chart of the Petitioner's operations which indicates that his position title would be called "Data Center Systems Analyst & Product Supplier." The Petitioner has not

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<sup>7</sup> The issue here is that the Petitioner's designation of this position as a Level II position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level II wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), such a position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

explained the change in position title, and whether it is indicative of any substantive change in the Beneficiary's duties.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592.

In any event, in a letter submitted in response to the RFE, the Petitioner stated: "The Beneficiary will be placed on a team of five other professionals, all of whom possess bachelor's degrees in an area related to their specialty." However, whether others on the Beneficiary's team possess a bachelor's degree is not directly relevant to the education required by the proffered position, as positions on the same team could have very different entry requirements.

The Petitioner previously designated the proffered position a Senior BI Consultant position. The organizational chart does not indicate that the Petitioner employs any senior BI consultants. The organizational chart indicates that the Beneficiary's position title is Data Center Systems Analyst & Product Supplier. It does not indicate that the Petitioner employs any other data center systems analyst and product suppliers.

Although the H-1B petition states that the Petitioner was founded in 2010 and has 21 employees, the Petitioner has not demonstrated the educational qualifications of anyone whom it employs, or has previously employed, as either a senior BI consultant or a data center systems analyst and product supplier. The Petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

#### D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Certain descriptions of the duties of the proffered position, such as integrating the Petitioner's products with its business intelligence infrastructure; supporting such activities as training, proof of concepts, product research and development; and liaising with executives and sales teams to periodically capture needs from the prospective customers and collaborate with product management team, contain insufficient indication of a nature so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with

sufficient specificity to show that they are more specialized and complex than systems analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. We again refer to our earlier comments and findings with regard to the implication of the Petitioner's designation of the proffered position in the LCA as a Level II (the second lowest of four assignable levels) wage, and hence one not likely distinguishable by relatively specialized and complex duties. Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, the Petitioner has not satisfied the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>8</sup>

#### IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>9</sup>

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of V-BIS-, Inc.*, ID# 124774 (AAO Oct. 4, 2016)

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<sup>8</sup> In response to the RFE, the Petitioner provided numerous master service agreements, statements of work, and agreements to support software, executed by the Petitioner and a customer. In the decision of denial, the Director found that those documents do not demonstrate that the Petitioner has specialty occupation work for the Beneficiary to perform. Although we do not disagree with the Director's finding, we find that, as is shown above, an analysis of those documents is unnecessary to a determination that the proffered position has not been shown to qualify as a specialty occupation position.

<sup>9</sup> As this issues precludes approval of the petition we will not address any of the additional issues we have observed in our review of this matter, except to note that the current record does not establish that the LCA corresponds to and supports the H-1B petition.